

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B03

PLR-119178-10

Date:

August 27, 2010

Legend

Parent =

Subsidiary =

Company Official =

Tax Professional =

Date 1 =

Date 2 =

Dear :

This responds to your letter dated April 27, 2010, requesting an extension of time under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent and Subsidiary to make an election to file a consolidated Federal income tax return, with Parent as the common parent, under § 1.1502-75(a)(1) of the Income Tax Regulations (hereinafter referred to as “the Election”), effective for their taxable year ending Date 1. Additional information was submitted on August 13 and August 19, 2010. The material information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of which Subsidiary is the only other member. Parent intended that Parent and Subsidiary file a consolidated Federal income tax return for the taxable year ending on Date 1, but for various reasons a valid Election was not filed. The period of limitations on assessment under § 6501(a) has not expired for Parent's or Subsidiary's taxable year ending Date 1 or any subsequent taxable year.

Section 1501 provides that an affiliated group of corporations has the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 of the Code for the taxable year, in lieu of separate returns. The making of a consolidated return is subject to the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to the consolidated return regulations prescribed under § 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return is considered such consent.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement. Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-1 to grant an extension of time for Parent and Subsidiary to file the Election, provided Parent and Subsidiary show they acted reasonably and in good faith, the

requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1).

Based on the facts and information submitted, including the representations made, we conclude that Parent and Subsidiary have shown they acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1, until Date 2, for Parent to file the Election (by filing a consolidated return, with Parent as the common parent, and attaching a Form 1122 for Subsidiary) for their taxable year ending Date 1.

The above extension of time is conditioned on the taxpayers' (Parent's and Subsidiary's) tax liability (if any) being not lower, in the aggregate, for the taxable year ending Date 1, and all subsequent years, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether Parent and Subsidiary qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or the Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-1, we relied on certain statements and representations made by Parent, Company Official, and Tax Professional. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-1 to file the Election, any penalties and interest that would otherwise be applicable, if any, still apply.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)